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Wane A. Z. D.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No. : 10/650,023
Applicants : LOMBARD et al.
Filed : 08/27/2003

Confirmation No. 6442

TC/A.U. : 1761
Examiner : PRATT, Helen F.

Docket No. : KFHI-109
Customer No.: 23290

ELECTION IN RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop AMENDMENT
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Restriction Requirement dated March 17, 2006, Applicants elect Group II, Claims 8-25, directed to a method of making a food product. The election is made with traverse. The Group IV claims should apparently be claims 44-45 and not 41-45 (which overlaps with Claims 26-43 of Group III). Also, Claims 44-48 of the Group IV claims are directed to a method of making a food product, not a method of increasing

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water activity using a tangent line. Claims 49-53 of Group IV are directed to a rotary die roll.

I. RESTRICTION BETWEEN GROUPS I AND II

Pursuant to MPEP 806.05(f), a process of making and a product made by the process can be shown to be distinct if (a) the process as claimed is not an obvious process for making the product and the process as claimed can be used to make other and different products, or (b) the product as claimed can be made by another and materially different process.

The Examiner stated that the food product could be made by extrusion. However, the food product as claimed is in the form of a flexible, rotary-molded strip. In addition, the food product as claimed has a high meat content, which increases palatability in comparison to extruded food products. See specification at paragraphs [0008] and [0018]. Thus, Applicants assert that the food product as claimed could not be made by extrusion. The requirements of MPEP 806.05(f) have not been met. Reconsideration and withdrawal of the restriction requirement between Groups I and II are respectfully requested.

II. RESTRICTION BETWEEN GROUPS II AND III

The Examiner asserts that the methods of Group II and Group III are distinct because each group has limitations that are not required by the other groups (Office Action at page 3). However, this is not the test for whether there are two or more independent inventions.

According to MPEP 806.04(A), an example of independent inventions would be two different combinations, not disclosed as capable of use together, having different

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modes of operation, different functions, or different effects. An article of apparel, such as a shoe, and a locomotive bearing would be an example. A process of painting a house and a process of boring a well would be a second example.

In contrast, the methods of Group II and the methods of Group III are both directed to making a rotary-molded and baked strip-shaped food product. Thus, these methods have similar modes of operation and similar functions, even though different claim limitations are present. Applicants note that most of the process steps are identical. Reconsideration and withdrawal of the restriction requirement between Group II and Group III are respectfully requested.

III. RESTRICTION BETWEEN GROUPS II AND IV

The Examiner asserts that the methods of Group II and Group IV are distinct because each group has limitations that are not required by the other groups (Office Action at page 3). As noted, this is not the test for whether there are two or more independent inventions. Also, as discussed above, the Group IV claims should include Claims 44-53, not 41-53. Claims 44-48 are directed to making a food product, not a method for increasing water activity using a tangent line. Claims 49-53 are directed to a rotary die roll.

The methods of Group II and Group IV are both directed to making a rotary-molded and baked food product. The methods of Groups II and IV have similar modes of operation and similar functions, even though different claim limitations are present. Clearly, the methods of Group II and the methods of Group IV are not as unrelated as the example of painting a house and boring a well. Reconsideration and withdrawal of the restriction requirement between Group II and Group IV are respectfully requested.

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IV. CONCLUSION

If there are any questions regarding this Response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application.

If there are any discrepancies in the fees, please charge or credit our Deposit Account No. 501032 (Docket No. KFHI-109).

Respectfully submitted,



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